

REESE HENNAGAN ESTATE

IBLA 78-383

Decided September 5, 1978

Appeal from decision of the Folsom District Office, Bureau of Land Management, canceling grazing lease GL 4419 for nonpayment of fee.

Affirmed.

1. Fees -- Grazing Leases: Cancellation or Reduction

43 CFR 4125.1-1(m)(3) (1977) provides that a grazing lease may be canceled for failure to make timely payment of grazing fees pursuant to 43 CFR 4125.1-1(h) (1977). The fact that cash was not available at the time payment was due; that executor of appellant estate relied upon his wife who failed to make timely payment; and that the wife was notified of a death in the family after the due date, does not justify the failure to pay the fee by the required date.

APPEARANCES: Ronald Hennagan, Executor of Reese Hennagan Estate.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

The Reese Hennagan Estate, through its executor Donald Hennagan, appeals from a decision of the Folsom District Office, Bureau of Land Management, dated March 22, 1978, canceling grazing lease GL 4419 for nonpayment of fees.

The decision sets forth the chronology of events leading to the cancellation:

On March 2, 1978, this office sent by Certified Mail (#7315) a Show Cause Notice with regard to non-payment of Grazing Lease Billing No. A000635 in the amount of \$120.80. This Show Cause Notice (received by Marilyn Jones on 3/4/78) allowed 15 days for payment. On 3/8/78 a copy of

that billing was sent to your office. A phone call on 3/16/78 resulted in a 4-day delay, giving you until 3/21/78 to pay. Payment has not been received as of this date. Therefore, in accordance with 43 CFR 4125.1-1(h), your grazing lease, No. 4419, is hereby cancelled.

In the statement of reasons, the executor says that he is unable to read or write except for signing his name. Because of his involvement in other matters, he did not become aware of the threatened cancellation until mid-March. He immediately sought to obtain the necessary funds, but at that time the estate had no cash assets. The executor asserts that as soon as funds were available, he sent the payment. He attributes his failure to make timely payment to his inability to read and his misunderstanding of the requirements because he is dependent upon members of his family.

Additional details are found in two letters written by Barbara Hennagan, wife of the executor, to Congressman B. F. Sisk, and BLM's response. Mrs. Hennagan explains that in March 1977 the executor paid a \$10 nonuse fee. In October 1977 she asked BLM if the executor could pay the remainder of the fees and graze cattle on the land. BLM said it would check on the condition of the land and let her know if the land could be used and what the fee would be. BLM claims that pursuant to this request a bill for \$120.80, based on use from October 1, 1977, to February 28, 1978, was sent on September 26, 1977. BLM alleges it received another call from Mrs. Hennagan on November 21, 1977, informing BLM she had lost the bill. A copy was sent the same day. Mrs. Hennagan claims the bill was never received, and consequently the land was not used.

BLM states that on March 2, 1978, a show cause notice for nonpayment of grazing fees was sent to the office of the attorney of the executor (received on March 4, 1978, by Marilyn Jones). On March 5, 1978, Mrs. Barbara Hennagan was informed by the attorney's office about the notice. She called BLM on March 6, 1978, and inquired as to why she had not received a bill. Mrs. Hennagan says at that time it was determined that the bills had been sent to the wrong address. On March 9, 1978, a letter and copies of two billings (last and current grazing seasons 1/) were sent by certified mail (received by Mrs. Hennagan).

Mrs. Hennagan says she received the bill on March 11, 1978, and called BLM on March 16, 1978. BLM told her the estate would lose the lease if it were not paid. BLM said it extended the

1/ Mrs. Hennagan explains that BLM told her she could wait awhile to pay the 1978 bill.

payment deadline from March 19 to March 21, 1978. Mrs. Hennagan told BLM she would mail the payment on March 20, 1978. On March 22, 1978, she received word that her grandmother had died, and because of the funeral was unable to send the two money orders until March 25, 1978. BLM had not received payment by March 22, 1978, and issued a decision canceling the lease.

BLM notes that this is the fourth occasion on which the Folsom District Office sent a show cause notice for nonpayment of grazing fees to this lessee. BLM contends that it has gone to considerable effort to work with and accommodate the executor of the appellant estate.

Mrs. Hennagan is disturbed by rumor that Phillip Miranda, one of the heirs to the Reese Hennagan Estate, the appellant herein, already has "the land all leased, even though our appeal time isn't up." BLM says Miranda has not been issued the grazing lease under appeal.

[1] 43 CFR 4125.1-1(m)(3) (1977) provides that a lease may be canceled pursuant to 43 CFR 4125.1-1(h) (1977) for failure to make timely payment of grazing fees. The executor claims that the estate had no cash assets at the time payment was due and that he mailed the checks as soon as possible. We cannot accept this as a valid excuse for failure to pay by the due date. The executor also attributes the late payment to the fact that he is dependent upon the members of his family because he cannot read the regulations. The record shows that Mrs. Barbara Hennagan, wife of the executor, mailed the checks after the due date. She was, in effect, acting as his agent in performing this duty. The negligence of an agent does not relieve appellant of the responsibility to make timely payment. See G. Wesley Ault, 16 IBLA 291 (1974). Mrs. Hennagan explains that the payment was late because of the death of her grandmother. If the death or critical illness had occurred prior to the time payment was due, there may be a basis for excusing the late payment, but we note that Mrs. Hennagan did not receive word of the death until after the due date.

BLM has made efforts to accommodate the executor of the appellant estate. The fact remains, however, that none of the reasons discussed in this appeal are sufficient to justify late payment. Therefore, we hold that BLM properly canceled the lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Edward W. Stuebing
Administrative Judge

